

AMENDED IN SENATE JUNE 5, 2014

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1261

**Introduced by Assembly Member Members Gorell, Holden, and
Olsen
(Principal coauthor: Assembly Member Bocanegra)**

February 22, 2013

An act to amend Section ~~17292.5~~ of the Education Code, relating to ~~public school facilities~~; 41202 of, and to add and repeal Article 7.5 (commencing with Section 8239.5) of Chapter 2 of Part 6 of Division 1 of Title 1 of, the Education Code, and to add and repeal Sections 17053.87 and 23687 of the Revenue and Taxation Code, relating to preschool funding.

LEGISLATIVE COUNSEL'S DIGEST

AB 1261, as amended, Gorell. ~~Public school facilities: expelled pupils program.~~ *Preschool: privately funded pilot program: tax credits.*

Existing law, the Child Care and Development Services Act, administered by the State Department of Education, requires the Superintendent of Public Instruction to administer child care and development programs that offer a full range of services for eligible children from infancy to 13 years of age. Existing law requires the Superintendent to administer all California state preschool programs, including, but not limited to, part-day and full-day age and developmentally appropriate programs for 3- and 4-year-old children.

This bill would, until January 1, 2020, authorize the department, as part of a pilot program, to accept monetary contributions made to the California Preschool Investment Fund, which this bill would create, by a person for purposes of preschool education, as provided. The bill would require the money in the fund to be used to, among other things, fund state preschools part of the California state preschool program located in one of the 5 participating counties, as provided. The bill would require participating counties to report to the department's Early Education & Support Division regarding the county's assessment of how the pilot program is performing. The bill would require any moneys remaining in the fund after January 1, 2020, to be transferred to any other state fund identified by the department that provides funding for increased access to preschool programs for low-income children.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill, under both laws, for taxable years beginning on or after January 1, 2015, and before January 1, 2019, would allow a credit equal to 40% of the amount contributed by the taxpayer during the taxable year to the California Preschool Investment Fund, as provided. The bill would limit the aggregate amount of credit allowed under both laws to not exceed \$250,000,000 and would require the State Department of Education to establish a procedure for a person to obtain from the department a receipt indicating specified information, including the amount of monetary contributions made, for purposes of the tax credits allowed under these provisions.

The bill would, until January 1, 2020, require the total annual amount of credits claimed pursuant to these provisions to be treated as though they were proceeds of taxes for purposes of calculating the moneys to be applied by the state for the support of school districts and community college districts pursuant to a specified provision of the California Constitution.

~~Existing law requires a school district that operates a program for expelled pupils to use available school facilities that conform with specified requirements, apply for emergency portable classrooms, or enter into a lease agreement for facilities, as specified.~~

~~This bill would also authorize a school district, if facilities that conform to specified requirements are not available, to submit a request to the State Allocation Board to exempt a building or portion of a building to be used to operate a program for expelled pupils from the definition of "school building." The bill would authorize the State~~

~~Allocation Board to grant an exemption for no longer than 2 years, if certain requirements are met. The bill would provide that the exemption is renewable. The bill would make other nonsubstantive changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Article 7.5 (commencing with Section 8239.5) is*
2 *added to Chapter 2 of Part 6 of Division 1 of Title 1 of the*
3 *Education Code, to read:*

4
5 *Article 7.5. California Preschool Investment Pilot Program*

6
7 *8239.5. The Legislature finds and declares that by providing*
8 *an additional source of funding, the state can expand the number*
9 *of preschool slots and the number of subsidies provided to help*
10 *reduce the waitlist for parents seeking prekindergarten child care*
11 *assistance.*

12 *8239.6. For purposes of this article, the following terms have*
13 *the following meanings:*

14 (i) *“Department” means the State Department of Education.*
15 (ii) *“Fund” means the California Preschool Investment Fund.*
16 (iii) *“Person” means an individual, partnership, corporation,*
17 *limited liability company, association, or other group, however*
18 *organized.*
19 (iv) *“Program” means the five-county investor funded preschool*
20 *pilot program.*

21 *8239.7. (a) No later than June 1, 2015, a county may apply*
22 *to the department for consideration of inclusion in the program.*
23 *For purposes of this section, a county’s local child care and*
24 *development planning council, established pursuant to Chapter*
25 *2.3 (commencing with Section 8499), shall be responsible for*
26 *making the application authorized pursuant to this section.*

27 *(b) No later than September 1, 2015, the department shall*
28 *determine, pursuant to subdivision (c), the five counties that shall*
29 *be included in the program. When making this determination, the*
30 *department shall ensure that urban, suburban, and rural counties*
31 *are represented in the program.*

1 (c) *The department shall make the determination of which five*
2 *counties shall be included in the program by giving priority to*
3 *counties that meet any of the following factors:*

4 (1) *The length of the county's waitlist of individuals seeking*
5 *public child care assistance.*

6 (2) *The ability to increase the number of preschool slots*
7 *available to children in the county.*

8 (3) *Whether the county received federal Race to the Top funds,*
9 *authorized under the federal American Recovery and Reinvestment*
10 *Act of 2009 (Public Law 111-5), with favorable consideration*
11 *going to the counties that received the funds.*

12 8239.8. (a) (1) *The department may accept monetary*
13 *contributions made by a person for funding the purposes of this*
14 *article. The California Preschool Investment Fund is hereby*
15 *created in the State Treasury to receive any monetary contributions*
16 *made pursuant to this article.*

17 (2) (A) *The department shall establish a procedure for a person*
18 *to make monetary contributions to the fund and for a person to*
19 *obtain from the department a receipt that indicates the amount of*
20 *monetary contributions made by that person. The receipt shall*
21 *also contain, at minimum, the date the monetary contribution was*
22 *made, the name of the person who made the contribution, the*
23 *amount of the monetary contribution, and whether the person has*
24 *or has not been allocated a tax credit pursuant to Section 17053.87*
25 *or 23687 of the Revenue and Taxation Code.*

26 (B) *Subject to the annual cap as provided in subdivision (f) of*
27 *Sections 17053.87 and 23687 of the Revenue and Taxation Code,*
28 *the department shall allocate credits to contributors on a first*
29 *come, first served basis.*

30 (C) *The department shall notify the Franchise Tax Board of the*
31 *credits allocated on at least a monthly basis, and the Franchise*
32 *Tax Board and the department shall place this information on*
33 *their respective Internet Web sites together with information as to*
34 *the amount of remaining credits, at least every calendar quarter,*
35 *including information as to whether the cap described in*
36 *subdivision (f) of Sections 17053.87 and 23687 of the Revenue and*
37 *Taxation Code may be reached by the end of the calendar quarter.*

38 (3) *Moneys in the fund shall be allocated as follows:*

39 (A) *First, moneys in the fund shall be transferred to the General*
40 *Fund in an amount equal to the aggregate amount of certified*

1 *credits allowed pursuant to Sections 17053.87 and 23687 of the*
2 *Revenue and Taxation Code for the taxable year.*

3 *(B) Second, upon appropriation:*

4 *(i) To the Franchise Tax Board and the department for*
5 *reimbursement of all administrative costs incurred by those*
6 *agencies in connection with their duties under this article.*

7 *(ii) To the department for the purposes of this article, as*
8 *provided in subdivision (b).*

9 *(b) The money appropriated to the department pursuant to*
10 *clause (ii) of subparagraph (B) of paragraph (3) of subdivision*
11 *(a) shall be used to fund the California state preschool programs,*
12 *pursuant to Article 7 (commencing with 8235). The money shall*
13 *only be used to support state preschools located in one of the five*
14 *counties participating in the program.*

15 *8239.9. A county selected to participate in the program*
16 *pursuant to Section 8239.7 shall annually report to the*
17 *department's Early Education & Support Division. The report*
18 *shall contain the county's assessment of how the program is*
19 *performing.*

20 *8239.10. (a) This article shall remain in effect only until*
21 *January 1, 2020, and as of that date is repealed, unless a later*
22 *enacted statute, that is enacted before January 1, 2020, deletes or*
23 *extends that date.*

24 *(b) Any moneys remaining in the fund as of January 1, 2020,*
25 *shall be transferred to any other state fund identified by the*
26 *department that provides funding for increased access to preschool*
27 *programs for low-income children.*

28 *SEC. 2. Section 41202 of the Education Code is amended to*
29 *read:*

30 *41202. The words and phrases set forth in subdivision (b) of*
31 *Section 8 of Article XVI of the Constitution of the State of*
32 *California shall have the following meanings:*

33 *(a) "Moneys to be applied by the State," as used in subdivision*
34 *(b) of Section 8 of Article XVI of the California Constitution,*
35 *means appropriations from the General Fund that are made for*
36 *allocation to school districts, as defined, or community college*
37 *districts. An appropriation that is withheld, impounded, or made*
38 *without provisions for its allocation to school districts or*
39 *community college districts, districts shall not be considered to*
40 *be "moneys to be applied by the State."*

(b) (1) “General Fund revenues which may be appropriated pursuant to Article XIII B,” as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B for the fiscal year in which they are received. General Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, “General Fund revenues that are the proceeds of taxes,” as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children’s programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor’s Budget for the Budget Act of 1986.

(2) (A) *For purposes of calculating the moneys to be applied by the state, as used in subdivision (b) of Section 8 of Article XVI, the “General Fund revenues that are the proceeds of taxes,” as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, shall include the total annual amount of credit claimed pursuant to Sections 17053.87 and 23687 of the Revenue and Taxation Code as though they were proceeds of taxes.*

(B) *This paragraph shall become inoperative on January 1, 2020.*

(c) “General Fund revenues appropriated for school districts,” as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, regardless of whether those appropriations were made from the General Fund to the

1 Superintendent, to the Controller, or to any other fund or state
2 agency for the purpose of allocation to school districts. The full
3 amount of any appropriation shall be included in the calculation
4 of the percentage required by paragraph (1) of subdivision (b) of
5 Article XVI, without regard to any unexpended balance of any
6 appropriation. Any reappropriation of funds appropriated in any
7 prior year shall not be included in the sum of appropriations.

8 (d) “General Fund revenues appropriated for community college
9 districts,” as used in paragraph (1) of subdivision (b) of Section 8
10 of Article XVI of the California Constitution, means the sum of
11 appropriations made that are for allocation to community college
12 districts, regardless of whether those appropriations were made
13 from the General Fund to the Controller, to the Chancellor of the
14 California Community Colleges, or to any other fund or state
15 agency for the purpose of allocation to community college districts.
16 The full amount of any appropriation shall be included in the
17 calculation of the percentage required by paragraph (1) of
18 subdivision (b) of Article XVI, without regard to any unexpended
19 balance of any appropriation. Any reappropriation of funds
20 appropriated in any prior year shall not be included in the sum of
21 appropriations.

22 (e) “Total allocations to school districts and community college
23 districts from General Fund proceeds of taxes appropriated pursuant
24 to Article XIII B,” as used in paragraph (2) or (3) of subdivision
25 (b) of Section 8 of Article XVI of the California Constitution,
26 means the sum of appropriations made that are for allocation to
27 school districts, as defined in Section 41302.5, and community
28 college districts, regardless of whether those appropriations were
29 made from the General Fund to the Controller, to the
30 Superintendent, to the Chancellor of the California Community
31 Colleges, or to any other fund or state agency for the purpose of
32 allocation to school districts and community college districts. The
33 full amount of any appropriation shall be included in the calculation
34 of the percentage required by paragraph (2) or (3) of subdivision
35 (b) of Section 8 of Article XVI, without regard to any unexpended
36 balance of any appropriation. Any reappropriation of funds
37 appropriated in any prior year shall not be included in the sum of
38 appropriations.

39 (f) “General Fund revenues appropriated for school districts
40 and community college districts, respectively” and “moneys to be

1 applied by the state for the support of school districts and
2 community college districts,” as used in Section 8 of Article XVI
3 of the California Constitution, shall include funds appropriated for
4 part-day California state preschool programs under Article 7
5 (commencing with Section 8235) of Chapter 2 of Part 6 of Division
6 1 of Title 1, and the After School Education and Safety Program
7 established pursuant to Article 22.5 (commencing with Section
8 8482) of Chapter 2 of Part 6 of Division 1 of Title 1, and shall not
9 include any of the following:

10 (1) Any appropriation that is not made for allocation to a school
11 district, as defined in Section 41302.5, or to a community college
12 district, regardless of whether the appropriation is made for any
13 purpose that may be considered to be for the benefit to a school
14 district, as defined in Section 41302.5, or a community college
15 district. This paragraph shall not be construed to exclude any
16 funding appropriated for part-day California state preschool
17 programs under Article 7 (commencing with Section 8235) of
18 Chapter 2 of Part 6 of Division 1 of Title 1 or the After School
19 Education and Safety Program established pursuant to Article 22.5
20 (commencing with Section 8482) of Chapter 2 of Part 6 of Division
21 1 of Title 1.

22 (2) Any appropriation made to the Teachers’ Retirement Fund
23 or to the Public Employees’ Retirement Fund except those
24 appropriations for reimbursable state mandates imposed on or
25 before January 1, 1988.

26 (3) Any appropriation made to service any public debt approved
27 by the voters of this state.

28 (4) With the exception of the programs identified in paragraph
29 (1), commencing with the 2011–12 fiscal year, any funds
30 appropriated for the Child Care and Development Services Act,
31 pursuant to Chapter 2 (commencing with Section 8200) of Part 6
32 of Division 1 of Title 1.

33 (g) “Allocated local proceeds of taxes,” as used in paragraph
34 (2) or (3) of subdivision (b) of Section 8 of Article XVI of the
35 California Constitution, means, for school districts as defined,
36 those local revenues, except revenues identified pursuant to
37 paragraph (5) of subdivision ~~(h)~~ (j) of Section ~~42238~~, 42238.02,
38 that are used to offset state aid for school districts in calculations
39 performed pursuant to Sections ~~2558~~, ~~42238~~, 2575, 42238.02, and
40 Chapter 7.2 (commencing with Section 56836) of Part 30.

(h) “Allocated local proceeds of taxes,” as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for community college districts, those local revenues that are used to offset state aid for community college districts in calculations performed pursuant to Section 84700. *districts*. In no event shall the revenues or receipts derived from student fees be considered “allocated local proceeds of taxes.”

(i) For purposes of calculating the 4-percent entitlement pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, “the total amount required pursuant to Section 8(b)” shall mean the General Fund aid required for schools pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, and shall not include allocated local proceeds of taxes.

~~(j) This section shall become inoperative on December 15, 2012, and, as of January 1, 2013, is repealed, only if the Schools and Local Public Safety Protection Act of 2012 (Attorney General reference number 12-0009) is not approved by the voters at the November 6, 2012, statewide general election, or if the provisions of that act that modify personal income tax rates do not become operative due to a conflict with another initiative measure that is approved at the same election and receives a greater number of affirmative votes.~~

SEC. 3. Section 17053.87 is added to the Revenue and Taxation Code, to read:

17053.87. (a) For taxable years beginning on or after January 1, 2015, and before January 1, 2019, there shall be allowed as a credit against the “net tax,” as defined in Section 17039, an amount equal to 40 percent of the amount contributed by the taxpayer during the taxable year to the California Preschool Investment Fund, created by Section 8239.8 of the Education Code.

(b) A credit shall only be allowed if the taxpayer has received a receipt from the State Department of Education pursuant to Section 8239.8 of the Education Code that indicates that the taxpayer has made a contribution to the California Preschool Investment Fund and that a credit would be allowed under this section. The taxpayer shall provide the receipt upon request to the Franchise Tax Board.

(c) (1) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce

1 the “net tax” in the following year, and succeeding four years if
2 necessary, until the credit is exhausted.

3 (2) A deduction otherwise allowed under this part for any
4 amount contributed by the taxpayer upon which the credit is based
5 shall be reduced by the amount of the credit allowed in subdivision
6 (a).

7 (d) Credit under this section shall be allowed only for credits
8 claimed on a timely filed original return of the taxpayer.

9 (e) (1) The Franchise Tax Board may prescribe rules,
10 guidelines, or procedures necessary or appropriate to carry out
11 the purposes of this section.

12 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
13 Division 3 of Title 2 of the Government Code does not apply to
14 any standard, criterion, procedure, determination, rule, notice, or
15 guideline established or issued by the Franchise Tax Board
16 pursuant to this section.

17 (f) The aggregate amount of credit that may be allowed pursuant
18 to this section and Section 23687 shall not exceed two hundred
19 fifty million dollars (\$250,000,000) for each calendar year.

20 (g) This section is repealed on December 1, 2019.

21 SEC. 4. Section 23687 is added to the Revenue and Taxation
22 Code, to read:

23 23687. (a) For taxable years beginning on or after January
24 1, 2015, and before January 1, 2019, there shall be allowed as a
25 credit against the “tax,” as defined in Section 23036, an amount
26 equal to 40 percent of the amount contributed by the taxpayer
27 during the taxable year to the California Preschool Investment
28 Fund, created by Section 8239.8 of the Education Code.

29 (b) A credit shall only be allowed if the taxpayer has received
30 a receipt from the State Department of Education pursuant to
31 Section 8239.8 of the Education Code that indicates that the
32 taxpayer has made a contribution to the California Preschool
33 Investment Fund and that a credit would be allowed under this
34 section. The taxpayer shall provide the receipt upon request to the
35 Franchise Tax Board.

36 (c) (1) In the case where the credit allowed by this section
37 exceeds the “tax,” the excess may be carried over to reduce the
38 “tax” in the following year, and succeeding four years if necessary,
39 until the credit is exhausted.

1 (2) A deduction otherwise allowed under this part for any
2 amount contributed by the taxpayer upon which the credit is based
3 shall be reduced by the amount of the credit allowed in subdivision
4 (a).

5 (d) Credit under this section shall be allowed only for credits
6 claimed on a timely filed original return of the taxpayer.

7 (e) (1) The Franchise Tax Board may prescribe rules,
8 guidelines, or procedures necessary or appropriate to carry out
9 the purposes of this section.

10 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
11 Division 3 of Title 2 of the Government Code does not apply to
12 any standard, criterion, procedure, determination, rule, notice, or
13 guideline established or issued by the Franchise Tax Board
14 pursuant to this section.

15 (f) The aggregate amount of credit that may be allowed pursuant
16 to this section and Section 17053.87 shall not exceed two hundred
17 fifty million dollars (\$250,000,000) for each calendar year.

18 (g) This section is repealed on December 1, 2019.

19 ~~SECTION 1. Section 17292.5 of the Education Code is~~
20 ~~amended to read:~~

21 ~~17292.5. If the governing board of a school district operates a~~
22 ~~program for expelled pupils, the governing board shall do one or~~
23 ~~more of the following:~~

24 ~~(a) Utilize available school facilities that conform to the~~
25 ~~requirements of Part 2 (commencing with Section 2-101), Part 3~~
26 ~~(commencing with Section 3-089-1), Part 4 (commencing with~~
27 ~~Section 4-403), and Part 5 (commencing with Section 5-102), of~~
28 ~~Title 24 of the California Code of Regulations.~~

29 ~~(b) (1) If facilities that conform to the requirements specified~~
30 ~~in subdivision (a) are not available, submit a request to the State~~
31 ~~Allocation Board to exempt a building or portion of a building to~~
32 ~~be used to operate a program for expelled pupils from the definition~~
33 ~~of "school building" within the meaning of Section 17283. The~~
34 ~~State Allocation Board may grant an exemption for no longer than~~
35 ~~two years if the governing board demonstrates all of the following~~
36 ~~to the satisfaction of the State Allocation Board:~~

37 ~~(A) The facilities are not located on a regular school site.~~

38 ~~(B) The facilities comply with all current applicable local~~
39 ~~building standards and all relevant local health and safety standards~~
40 ~~in the community in which it is located.~~

1 ~~(C) The facilities shall be used to operate a program for expelled~~
2 ~~pupils.~~

3 ~~(D) There shall be no more than 124 pupils enrolled in~~
4 ~~kindergarten or any of grades 1 to 12, inclusive, at any one time~~
5 ~~in the facilities, or portion of the facilities, and the remainder of~~
6 ~~the facilities shall not be used for instructional purposes.~~

7 ~~(E) The use of the facilities is critical to providing an effective~~
8 ~~community-based program.~~

9 ~~(F) The use of other facilities that would meet seismic safety~~
10 ~~standards for school facilities is not practical.~~

11 ~~(G) A structural engineer has submitted a report certifying that~~
12 ~~the facilities possess no substantial structural hazards.~~

13 ~~(2) An exemption granted pursuant to this subdivision is~~
14 ~~renewable.~~

15 ~~(e) Apply for emergency portable classrooms pursuant to~~
16 ~~Chapter 14 (commencing with Section 17085) of Part 10.~~

17 ~~(d) Enter into a lease agreement for facilities, provided that the~~
18 ~~facilities are limited to a structure where a structural engineer has~~
19 ~~submitted a report that determines substantial structural hazards~~
20 ~~do not exist. Before entering into a lease, the governing board of~~
21 ~~the school district shall certify to the State Allocation Board that~~
22 ~~all reasonable efforts have been made to locate the program in~~
23 ~~facilities that conform to the structural safety standards listed in~~
24 ~~subdivision (a).~~